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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,865	06/27/2006	R. Justin Price	PHJM0681-008	1507
26948 7590 03/09/2009 VENABLE, CAMPILLO, LOGAN & MEANEY, P.C. 1938 E. OSBORN RD PHOENIX, AZ 85016-7234				
EXAMINER YIP, WINNIE S				
ART UNIT 3636		PAPER NUMBER		
NOTIFICATION DATE 03/09/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@vclmlaw.com

### Office Action Summary

**Application No.**

10/596,865

**Applicant(s)**

PRICE ET AL.

**Examiner**

Winnie Yip

**Art Unit**

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-893)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 6/27/2006

### **DETAILED ACTION**

This is a first office action for application Serial No. 10/596,865 filed on June 27, 2006 which is filed under U.S.C. 371 of PCT/US04/43986 filed on December 30, 2004 which claims priority of provisional application No. 60/534,308 filed on January 5, 2004.

Claims 1-30 are pending in the application.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-17 and 24-27, 29-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 24-27, 29-30, the term "the apex" (claim 1, line 6; claim 24, line 12; claim 25, lines 11 and 18 ) lacks a proper antecedent basis.

In claims 17, 24 and 25, the term "the distance" (claim 17, line 6; claim 24, line 16; claim 25, line 23) lacks a proper antecedent basis.

In claim 2, line 2, it is not clear what does mean by "by the use of sleeves". It appears to read "by sleeves".

In claim 3, the term "similar" renders the claim indefinite since it was not clear what applicant intended to cover by the recitation "similar material" See MPEP 2173.05(6).

In claims 4 and 5, the features of "sleeves" (claim 4, line 2) and "intermittent sleeves" (claim 5, line 2) are confusing whether these "sleeves" are different features then the "sleeves" as

previous cited in claim 2? If they are the same features, a proper antecedent and consistency must be provided. For example, the term "sleeves" (claim 4, line 2) should read "the sleeves". Appropriate correction is required.

In claim 13, the phrase "selected form the group consisting of nylon and polyester and cotton" (line 2) is improper phrase.

3. Claims 8 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the cooperative relationship between the "fourth flexible framing rod" and the "third flexible framing rod" since the claims 8 and 16 refer to claim 7 and 15 respectively.

4. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: whether not or the third flexible framing rod is inserted into the storage bag, and how to be inserted.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-16 and 28-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Holub (US Patent No. 7,025,073).

As claims 1-5: Holub teaches a fast-erecting portable structure (see Fig. 2) comprising: first and second flexible framing rods (24) each inherently having two ends (24A) and a middle, each flexible frame rod (24) formed substantially into an inverted U-shape with two ends (24A) being non-removably connected to anchoring (36) to the ground, the first and second flexible framing rods (24) crossing each other near an apex of the inverted U-shape, a flexible skin (20) slidably connected to the middles of the flexible framing rods by sleeves (26) which are sewn into the flexible skin, and the flexible skin having fixed flaps (52) being non-removably connected to the two ends (24A) of the flexible framing rods (24), the ends of the flexible framing rods acting as a base of the portable structure.

In regard to claims 7-8 and 15-16, Holub teach the structure further comprising a third and a fourth flexible framing rods (28) each formed substantially into an inverted u-shape with an apex at a middle of the rod respectively, the third and fourth flexible framing rods crossing the first and second flexible framing rods (24) respectively near from the apex of the inverted u-shape (as claims 7-8), the third and fourth flexible framing rods crossing the first and second flexible framing rods (24) respectively at a location offset from (the apexes) where the first and second flexible framing rods (24) cross each other (as claims 15-16), and the flexible skin is

removably connected to middles of the third and fourth flexible framing rods by hooks (28) and non-removably connected to two ends of the rods respectively.

In regard to claims 6 and 9, Holub teaches the portable structure further comprising a fly (22) having fly framing rods mounted on the flexible framing rods of the portable structure as claimed.

In regard to claim 12, Holub teaches the flexible framing rods (24) being movable independently of each other.

In regard to claim 13, Holub teaches the flexible skin comprising material being canvas or other waterproof, fabric, and stretchable material which is considered to be consisting of nylon and cotton as claimed.

In regard to claim 28, Holub's tent is inherently stored into a storage device.

In regard to claim 29, Holub teaches the flexible skin (20) is capable to be a non-divisible flexible skin.

In regard to claim 30, Holub shows the flexible framing rod may be non-joined.

7. Claims 1, 7-16, 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer et al. (US Patent No.5,901,727).

As claims 1 and 29-30: Kramer et al. teach a fast-erecting portable structure (see Fig. 1 and Fig 13) comprising: a first and second flexible framing rods (12, 14; ) each inherently having two ends and a middle, each flexible framing rod having an inverted U-shape, wherein the flexible framing rods crossing each other near an apex of the inverted U-shape (see Fig. 1), a flexible skin (10) being slidably connected to the middles of the flexible framing rods by a

plurality of framing rod hooks (16) and flexible ties (108), and non-removably connected to the two ends of the flexible framing rods, wherein the ends of the first and second flexible framing rods act as a base of the portable structure, the flexible skin (10) is considered to be non-divisible and is supported by the flexible framing rods to form a dome shaped construction.

In regard to claim 30, Kramer et al. show the flexible framing rods are non-jointed.

In regard to claims 7-8: Kramer et al. teach the structure (see Fig. 13) further comprising: a third and a fourth flexible framing rods (70, 74) each formed substantially into an inverted u-shape with an apex at a middle of the rod respectively, the third and fourth flexible framing rods crossing the first and second flexible framing rods (68, 72) respectively near from the apex of the inverted u-shape, and the flexible skin is removably connected to middles of the third and fourth flexible framing rods and non-removably connected to two ends of the rods respectively.

In regard to claim 11, Kramer et al. teaches the flexible framing rods being formed by flexible spring wires.

In regard to claim 12, Kramer et al. teach the structure having the flexible framing rods being moved independently of each other,

In regard to claim 13, Kramer et al. teach the flexible skin comprising material made of nylon.

In regard to claim 14, Kramer et al. teach the flexible skin () being connected to the flexible framing rod near the intersection of the rods by a flexible tie (108) with a hook (16) thereon.

In regard to claims 15-16: Kramer et al. teach the structure (see Fig. 13) further comprising: a third and a fourth flexible framing rods (70, 74) each formed substantially into an

inverted u-shape with an apex at a middle of the rod respectively, the third and fourth flexible framing rods (70, 74) crossing the first and second flexible framing rods (68, 72) respectively near but offset from the apexes of the first and second flexible framing rods where being crossed, and the flexible skin is removably connected to middles of the third and fourth flexible framing rods and non-removably connected to two ends of the rods respectively.

8. Claims 1-5, 11-14, and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Wu (US Patent No. 5,370,145).

Wu teaches a fast-erecting portable structure (see Fig. 1) comprising: first and second flexible framing rods (30,31) each inherently having two ends and a middle, each flexible framing rod is formed substantially into an inverted U-shape with the two ends being non-removably connected to joint rings (23) to act as a base of the portable structure, the first and second flexible framing rods (30, 31) crossing each other near an apex of the inverted U-shape, a flexible skin (21) slidably connected to middles of the flexible framing rods by sleeves (24) which are sewn into the flexible skin, the flexible skin is capable non-divisible, the flexible skin being connected to the flexible framing rod near the intersection of the framing rods by a flexible tie (29), and flexible framing rods are formed of flat spring wire, whereby the flexible frame rods and the flexible skin are coilable into a small size to be stored by a suitable storage device, and can be erected into a shape when the structure is released from the storage device.

9. Claims 17-19, and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Schweitzer (US Patent NO. 4,085,873).



Schweitzer teaches a storage bag having a front (10) and a back sheets (12) each having a perimeter having a shape of a substantially circular disk and being connected together by a spacer (16, 14) therebetween, the front sheet having an opening and a flap (14) for opening or closing the opening by zipper fasteners (18) along the perimeters of the flap and the front sheet, at least one pocket (32) being formed on an inside surface of the back sheet (12) and a second pocket (28) on the first front (10), whereby a portable structure which has flexible framing rods is capable to be stored inside of storage bag, and the first pocket is capable to be oriented to receive ends of the flexible rods while the flexible framing rods are stored inside of the storage bag.

*Claim Rejections - 35 USC § 103*

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer et al. '727 or Wu '145 as applied to claims 1 and 7-8 above, and further in view of Nichols (US Patent No. 4)709,718).

Kramer et al. or Wu disclose a portable structure comprising structural limitations as claimed except a fly. Nichols teaches a portable structure comprising a fly (12) being supported by a fly framing rod (14) and being removably connected to an axis portable structure near apex of a inverted u-shaped of two crossed flexible framing rods. Therefore, it would have been

obvious to one ordinary skill in the art at the time the invention was made to modify the portable structure of Kramer et al. or Wu having a fly with fly support rods being removably connected to the top of an exit portable structure as taught by Nichols for providing additional protection from raining.

12. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer et al. '727 or Wu '145 as applied above, and further in view of Ransom et al. (US Patent No.7,040,333).

Kramer et al. or Wu disclose a portable structure comprising structural limitations as claimed except a storage bag having an interior pocket for allow the flexible framing rods of the structure being stored inside of the storage bag as claimed. Ransom et al. teaches a portable structure comprising plurality of flexible framing rods (12) and a flexible skin (40 or 15) supported by the rods to form a dome shape configuration in an erected position, the flexible framing rods (12a-12d) being able to coiled into small sizes for storing, and a storage bag (60) having a front sheet, a back sheet, and a spacer connected therebetween to define an interior pocket between the front and back sheets, and a zipper connected between the front and back sheets for closing and opening the interior pocket, and the folded portable structure being inserted and zippered inside of the storage bag for storing. It would have been obvious to one ordinary skill in the art to modify the portable structures of Kramer et al. or Wu to have a storage bag having an interior pocket for receiving the folded portable structure in a storage condition as taught by Ransom et al. for easily storing the portable structure in a compact position for being easily transported.

***Allowable Subject Matter***

13. Claims 24-25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

14. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

15. Applicant's arguments filed on June 27, 2016 have been fully considered but they are not persuasive.

A. In regard to applicant's argument that Kramer et al. '727 having the ends of the flexible framing rods being "removably connected" to the tent which is not anticipated the claimed invention, it is not deemed persuasive. In this case, applicant claims "a flexible skin, ..., non-removably connected to the two ends" of the first and second flexible framing rods. According to the specification that the ends (22) of the rods (20, 300) is non-removably connected to the hole of a flap (12) by fasteners (16). Kramer et al. teach the ends of the rods being fixed to anchor (76) and being fixed to the flap of the tent (the flexible skin). Therefore, Kramer et al. is considered have the flexible skin (the tent) being "non-removably connected" to the ends of the rods as claimed. Therefore the reference to Kramer et al. is broadly read on the claimed invention.

B. In regard to applicant's argument that Schweitzer '873 does not teach the storage bag having the first pocket that "is oriented to receive the ends of the flexible rods" as claimed, it is

not deemed persuasive. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, as discussed above, Schweitzer teaches the storage bag having a pocket (32) connected to a inside surface of the back sheet (12), the pocket (32) having a zippered opening (36) as claimed, therefore, the pocket is considered to be capable to receive the ends of the flexible rod when a portable structure is inserted into the bag. Notice, in claims 17-23, the portable structure and the flexible framing rods are not parts of the claimed invention and give very little patentability weight.

Therefore, the rejections still granted.

#### ***Conclusion***

**16.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brady '044 and McConnell '050 teach various portable structure having flexible framing rods being coiled into a small size to be stored into a storage bag as similar to the claimed invention. Sato '333, Watts et al. '651, Howe '896, Howe '504, Nichols '935, and Cantwell et al. '505 teach various tents having flexible framing rods having ends being non-removably connected to the flexible skin as similar to the claimed invention.

#### ***Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Winnie Yip/  
Primary Examiner,  
Art Unit 3636

wy  
February 27, 2009